

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,

AT DODDABALLAPUR.

Dated this the 26th day of July, 2019

PRESENT: Sri.M.B.KULKARNI,
B.Sc., LL.B (Spl)
Senior Civil Judge & JMFC.,
Doddaballapur.

O.S.No.504/2016

Plaintiff: Sri.Muniyappa.

(Represented by Advocate Sri.Y.S.Ramesh.)

V/s.

Defendants: 1. Sri.Nagaraju and 2 others

(Represented by advocate Sri.A.K.R.)

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Order on I.A.No.VII

This is the application filed by the defendant No.1 for himself and on behalf of defendant No.1 to 3 for permission to file their written statement by condoning delay as prayed for.

2. In the accompanying affidavit of I.A.No.VII it is averred by the defendant No.1 that, the plaintiff has filed this suit for partition and separate possession of his share in the suit properties. In this case already evidence of plaintiff is completed and matter is posted for arguments and at this stage the defendant searched some documents and given instruction to his counsel to file his written statement and delay in filing his written statement was for non availability of certain

document. Therefore such delay is not intentional one but for the bonafide grounds of want of proper documents. Hence, prayed to allow I.A.No.VII.

3. The plaintiff has filed objection to I.A.No.VII contending that the said I.A. is false and such application is not maintainable either in law or on facts. It is further contended that in this case already evidence of plaintiff is completed and matter is posted for arguments and at this stage the defendant has come up with such application seeking permission to file his written statement at the belated stage. Therefore such I.A.No.VII is not maintainable which is planned to drag on the proceedings and to harass the plaintiff. The defendant is watching the Court proceedings on every date of hearing being out side Court hall and intentionally not appeared before this Court to take his own defense and when matter is posted for arguments he has come up with this false application. Hence, such application is not maintainable which is barred by time as per citation of Apex Court in AIR 2007 SC Page No.1574. Hence, prayed to dismiss I.A.No.VII.

4. Heard both sides on I.A.No.VII. Perused the material placed on record.

5. In the light of the above, following points arise for my consideration.

Point No.1: Whether I.A.No.VII filed by the defendant No.1 deserves to be allowed?

Point No.2: What order?

6. My finding to the above points is as under.

Point No.1: In the affirmative.

Point No.2: As per final order.

REASONS

7. **Point No.1:** It is not disputed by the both parties to the suit that already evidence of plaintiff is completed and matter is posted for arguments on the merits of the suit. It is also not disputed by the both parties to the suit that the defendant has not filed his written statement in time. Therefore the written statement of defendant is taken as nil on 13-06-2017 and case is posted for plaintiffs evidence. Therefore the plaintiff has completed his evidence as if exparte evidence and at this stage when the matter is posted for arguments the defendant has come up with this application to permit him to file written statement and contest the suit and the plaintiff has opposed the same on the basis of two citations reported in No.1 HCR 2018 KAR Page No.336 and No.2. 2019 SCCR Page No.421.

8. As per the above citations it is held by the Apex Court if there is inordinate delay in filing written statement more than 08 years it is nothing but negligence and inaction on the part of defendant to take his own defense and in such cases he cannot be allowed to file his written statement at the later stage but in view of the citations relied upon by the defendant No.1 reported in ILR 2003 KAR Page No.2205 and CRP No.100/2009 of Delhi High Court, it is held that even though the defendant has not filed his written statement within 90 days from date of his appearance or service of summons he does not loose his right to file

his written statement subject to condition of convincing the Court regarding the condonation of delay on valid and proper grounds and Court can exercise inherent powers to condone such delay subject to awarding reasonable costs. Therefore on the basis of such citations the delay of two years in filing written statement can be condoned subject to imposing cost for having caused such delay in order to adjudicate the rights and liabilities of the parties to the suit completely and finally on the merits of the suit. Hence, I answered point No.1 in the affirmative.

9. **Point No.2:** On the basis of my above reasons and in the result I proceed to following;

Order

1. The I.A.No.VII filed by the defendant No.1 is hereby allowed with cost of Rs.1000/- for having caused delay in the disposal of the suit.
2. The defendant is permitted to file his written statement and to contest the suit and already written statement filed by the defendant is taken on record.

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 26th day of July, 2019.)

(M.B.KULKARNI)

Senior Civil Judge,
Doddaballapur.